

1
2
3
4
5
6
7
8

EXCEDED FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

KUANG-BAO P. OU-YOUNG,
Plaintiff,
v.
JOHN G. ROBERTS, JR., *et al.*,
Defendants.

Case No. 14-CV-80017

**ORDER DENYING LEAVE TO FILE
CERTAIN PREVIOUSLY FILED
CLAIMS AND DISMISSING NEW
CLAIMS**

[Re Docket No. 1]

Plaintiff Kuang-Bao P. Ou-Young has been declared a vexatious litigant and must obtain leave of court before “filing any further suits alleging any violations of the federal criminal statutes, pursuant to 18 U.S.C. § 1512(b), 18 U.S.C. § 1512 (c), and 18 U.S.C. § 371, and the FTCA [Federal Tort Claims Act], codified at 28 U.S.C. § 2671 *et seq.*, involving parties that he named in the current case, or [in previously filed cases in this Court].” *See Ou-Young v Roberts*, Case No. 13-cv-4442 EMC, E.C.F. No. 40 (N.D. Cal. Dec. 20, 2013) (Vexatious Litigant Order).

Plaintiff’s current complaint involves allegations of the named statutes against nine defendants he has previously named. Plaintiff also names two additional defendants, District Judge Edward M. Chen and Assistant United States Attorney Claire Cormier. Plaintiff has not named these individuals as defendants in his prior cases, but alleges the same claims against them.

1 The court has reviewed plaintiff's complaint against all defendants, and finds no potentially
2 cognizable claims therein. Plaintiff's claims against the nine defendants previously sued are barred
3 by Judge Chen's Vexatious Litigant Order. The claims against Judge Chen and Ms. Cormier are
4 dismissed sua sponte under Federal Rule of Civil Procedure 12(b). *Omar v. Sea-Land Service, Inc.*,
5 813 F.2d 986, 991 (9th Cir. 1987) ("A trial court may dismiss a claim sua sponte under Fed. R. Civ.
6 P. 12(b)(6). . . . Such a dismissal may be made without notice where the claimant cannot possibly
7 win relief." (citation omitted)). As previously explained in plaintiff's most recent case, the court
8 lacks jurisdiction over his claims because Judge Chen and Ms. Cormier are immune from suit. *See*
9 Vexatious Litigant Order at 7-8 (explaining judicial and prosecutorial immunity). Moreover,
10 plaintiff cannot state a claim because the subject federal criminal statutes do not provide a private
11 right of action. *Id.* at 9. Finally, the court lacks jurisdiction over the FCTA claims asserted against
12 Judge Chen and Ms. Cormier because plaintiff did not exhaust his administrative remedies. *Id.* at
13 10. Because plaintiff has not established jurisdiction and cannot state a claim for relief, the entire
14 complaint is dismissed with prejudice.

15 .

16
17 Dated: January 29, 2014


Ronald M. Whyte
United States District Judge

20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

KUANG-BAO P. OU-YOUNG,

Case Number: CV14-80017 RMW

Plaintiff,

CERTIFICATE OF SERVICE

v.

JOHN G. ROBERTS, JR., et al.,

Defendant.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 30, 2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Kuang-Bao P. Ou-Young
1362 Wright Avenue
Sunnyvale, CA 94087

Dated: January 30, 2014

Richard W. Wieking, Clerk
By: Jackie Lynn Garcia, Deputy Clerk